

1 Richard L. Nolan  
 2 4650 W. Carla Vista Drive  
 3 Chandler, AZ 85226-2912  
 (480) 699-8866 (Home)  
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IN THE UNITED STATES DISTRICT COURT

7

FOR THE DISTRICT OF ARIZONA

8

Richard L. Nolan, )  
 9 )  
 Plaintiff, )

10

vs. )

11

Department of the Interior )  
 12 Dirk Kempthorne, Secretary )

13

Defendant. )

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**Jurisdiction**

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U.S. Government Defendant (See attached decision)  
 18 EEOC Petition No. 0320080052  
 MSPB No. DE075207014213

19

**Complaint**

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21 Appeal of EEOC & Merit Systems Protection Board  
 (MSPB) decisions concerning reprisal and wrongful  
 22 termination of employment (civil rights,  
 employment, [442]).

23

CV 08-1884-PHX-JAT

**Demand**

- 1  
2 1. The Agency will reinstate the plaintiff to the  
3 position of Program Manager (Quality of Work Life), GS-  
0301-13, step 10, at the BLM Arizona State Office. The  
effective date will be December 6, 2006.
- 4 2. The plaintiff will be paid all lost wages and other  
5 benefits of employment, including lost merit or COLA  
raises.
- 6 3. The Agency must agree to take no reprisal or  
7 retaliatory action(s) against the plaintiff for  
exercising his statutory rights.
- 8 4. The Agency must agree to abide by both by the letter  
9 and intent of the EEO Settlement Agreement, dated  
February 11, 2000. The resolution agreement was signed  
10 by the plaintiff as well as Denise Meredith, State  
Director at that time, and Melodee Stith, who was, at  
11 the time, Department of the Interior (DOI) Director of  
the Office of Equal Opportunity (OEO). The terms of  
that agreement provide:
  - 12 a. The Agency may not change the duties of the  
13 plaintiff's former position description without his  
consent and written agreement;
  - 14 b. The Agency must renegotiate the plaintiff's  
15 supervisory reporting relationship since his previous  
manager, Lonna O'Neal, is no longer employed by the  
16 Agency;
  - 17 c. The plaintiff's duty station will remain in the  
18 Phoenix, Arizona metropolitan area and that the  
duty location will be a commuting distance no  
19 further than the distance he was commuting at the  
time of the settlement;
  - 20 d. The Agency will not make any attempt to change the  
21 plaintiff's duty station during his tenure with the  
Bureau of Land Management, or the Department of the  
22 Interior;
  - 23 e. The plaintiff's Official Personnel Folder (OPF)  
shall continue to be maintained by the National Human  
Resources Management Center in Denver, Colorado and

1 not at the BLM Arizona State Office or any other  
2 location;

3 f. In the event the position currently referred to as  
4 the "BLM Arizona Human Resources Officer" results in  
5 an upgrade to the GS-14 level at any time during the  
6 plaintiff's tenure with the Bureau of Land Management  
or the Department of the Interior, he will be promoted  
to the same grade non-competitively. The promotion  
action will be effective the same date as the  
promotion of the Human Resources Officer;

7 g. The plaintiff will retain a private office with a  
8 door and will experience no loss in status;

9 h. The plaintiff will continue to participate in the  
10 BLM Arizona On-going Telecommuting Program from two to  
five days per week, as agreed upon with his immediate  
supervisor.

11 5. The Agency will to issue the plaintiff a STAR  
12 award in the amount of 5% of his annual salary,  
\$90,692.00 equal to \$ 4,534.60 for the annual rating  
period October 1, 2003 - September 30, 2004.

13 6. The Agency will issue the plaintiff a STAR award  
14 in the amount of 5% of his annual salary, \$93,643.00  
equal to \$ 4,682.15 for the annual rating period  
15 October 1, 2004 - September 30, 2005.

16 7. The Agency will issue the plaintiff a STAR award  
17 in the amount of 5% of his annual salary, \$96,404.00  
equal to \$4,820.20 for the annual rating period  
18 October 1, 2005 - September 30, 2006.

19 8. The Agency will contract for and complete a BLM  
20 Arizona all employee satisfaction survey, providing  
the plaintiff with a copy of the report immediately  
upon receipt of the report from the vendor.

21 9. The Agency will provide the plaintiff with the  
22 Quality of Work Life Team's request for the Awards  
Distribution Report for fiscal years 2003, 2004, 2005,  
23 and 2006 in the format requested.

24

1 10. The Agency will provide the plaintiff with a  
2 complete and unredacted copy of the Human Resources  
NHRMC Review conducted in March, 2005.

3 11. The Agency will reinstate the plaintiff access to  
4 the BLM Arizona OPF room.

12. The Agency will reinstate the plaintiff's access 5  
to the BLM Arizona Alpha Roster.

6 13. The Agency will reinstate the plaintiff access to  
7 the BLM Arizona Organization Rosters.

8 14. The Agency will provide the information requested  
9 regarding the BLM Arizona separations information in  
10 the future and for the fiscal years 2002 to the  
present. The plaintiff will have access to all exit  
interviews and separated employees' chronology copies  
of the SF-50's.

11 15. The Agency will ensure that the plaintiff will  
12 not be blocked from accessing websites he needs in  
order to perform his official duties.

13 16. The Agency agrees no other obstacles will be  
14 placed in the plaintiff's career path that will  
adversely affect his ability to successfully perform  
15 the duties of his official position description and  
he shall have access to all information and data  
16 available to the employees of the BLM Arizona Human  
Resources Office. The Agency will notify those  
17 applicable employees of the Agency of his authorized  
access and be instructed to be cooperative in  
providing him with information.

18 17. The Agency agrees should contemplation occur of  
19 a change that will affect the plaintiff status or  
working conditions, the Agency will confer with the  
20 plaintiff and obtain input prior to any change.

21 18. The Agency will restore all sick leave used by  
22 the plaintiff as a result of the discrimination and  
reprisal actions taken by management from 2001  
23 through 2006.

1 19. The Agency will reimburse the plaintiff all out  
2 of pocket medical expenses incurred by the plaintiff  
as a result of the adverse actions taken against him.

3 20. The plaintiff will be paid the lump sum  
4 \$300,000.00 as compensatory damages.

5 21. The Agency will pay all of the plaintiff's  
6 attorney fees and costs incurred as a result of his  
filing of the charge(s) at issue.

7 22. The Agency will cancel the Retirement in Lieu of  
8 Removal personnel action, and expunge it from the  
plaintiff's Official Personnel Folder (OPF).

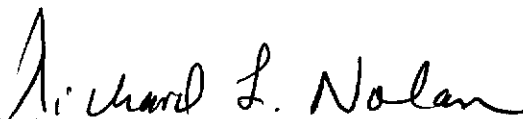
9 23. The Agency will restore the plaintiff's office  
10 space to pre-removal/retirement state with all/same  
contents and the office space will be located on the  
7<sup>th</sup> floor of the ASO.

11 24. The Agency will restore the plaintiff to his  
12 managerial status and ensure he receives all  
information distributed, electronic and otherwise, to  
13 the managers and supervisors in BLM Arizona.

14 25. The Agency agrees to allow the plaintiff to  
15 attend the second half of the Budget course that was  
canceled by Carl Rountree in 2005. The training  
16 course will be scheduled and funded within 3 months  
of his reinstatement.

17 26. The Agency agrees to issue the plaintiff a  
18 performance appraisal for fiscal year 2006. The  
plaintiff will receive a rating of 5 on both critical  
19 elements, and his annual overall rating of record  
will be exceptional, level 5.

20 Dated: October 14, 2008

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23 \_\_\_\_\_  
Signature

1 Richard L. Nolan  
2 4650 W. Carla Vista Drive  
3 Chandler, AZ 85226-2912  
4 (480) 699-8866 (Home)  
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**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**  
**Office of Federal Operations**  
**P. O. Box 19848**  
**Washington, D.C. 20036**

Richard L. Nolan,  
Petitioner,

v.

Dirk Kempthorne,  
Secretary,  
Department of the Interior,  
Agency.

Petition No. 0320080052

MSPB No. DE0752070142I3

**DECISION**

Petitioner filed a timely petition with the Equal Employment Opportunity Commission asking for review of the final Order issued by the Merit Systems Protection Board (MSPB) concerning his claim of discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e *et seq.*

In an appeal to the MSPB, petitioner alleged that he was discriminated against on the basis of reprisal for prior protected EEO activity when he was removed from his position for failure to accept a directed reassignment. Briefly, the evidence at the MSPB hearing showed petitioner worked as a Labor Relations Specialist with the Bureau of Land Management (BLM) until 2000. At that time, he entered into an EEO settlement agreement whereby he would work 50% of the time for BLM in Arizona and 50% of the time for the Office of Civil Rights (OCR) in Washington, D.C. Petitioner's full salary was paid for by BLM, and he was allowed to work remotely in OCR from Arizona. Starting in 2004, BLM faced budget restrictions became concerned with paying complainant's full-time salary for essentially a part time employee. Eventually, in 2006, it was determined that OCR could better utilize petitioner's skills full-time and OCR was willing to pay for petitioner's salary. In June 2006, petitioner was issued a letter directing his reassignment to the position of Special Emphasis Program Manager with OCR, requiring him to move to Washington, D.C. at agency expense. Petitioner turned down the directed reassignment and was then removed effective December 5, 2006.

The MSPB Administrative Judge (AJ) issued an initial decision finding that the agency had a legitimate reason to reassign petitioner. The AJ specifically found that the settlement agreement did not detract from the legitimacy of the reassignment, noting that the reassignment came six years after the signing of the agreement. The AJ noted that other employees could do petitioner's work and that OCR needed petitioner for full time work. Finally, the AJ found that petitioner did not establish a nexus between his EEO activity and the action in removing him. Petitioner sought review by the full Board, which denied his petition. Petitioner then filed the instant petition.

EEOC regulations provide that the Commission has jurisdiction over mixed case appeals on which the MSPB has issued a decision that makes determinations on allegations of discrimination. 29 C.F.R. § 1614.303 *et seq.* The Commission must determine whether the decision of the MSPB with respect to the allegation of discrimination constitutes a correct interpretation of any applicable law, rule, regulation or policy directive, and is supported by the evidence in the record as a whole. 29 C.F.R. § 1614.305(c).

Based upon a thorough review of the record, it is the decision of the Commission to concur with the final decision of the MSPB finding no discrimination. The Commission finds that the MSPB's decision constitutes a correct interpretation of the laws, rules, regulations, and policies governing this matter and is supported by the evidence in the record as a whole.

#### PETITIONER'S RIGHT TO FILE A CIVIL ACTION (W0408)

This decision of the Commission is final, and there is no further right of administrative appeal from the Commission's decision. You have the right to file a civil action in an appropriate United States District Court, based on the decision of the Merit Systems Protection Board, **within thirty (30) calendar days** of the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official agency head or department head, identifying that person by his or her full name and official title. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office, facility or department in which you work.

#### RIGHT TO REQUEST COUNSEL (Z0408)

If you decide to file a civil action, and if you do not have or cannot afford the services of an attorney, you may request that the Court appoint an attorney to represent you and that the Court permit you to file the action without payment of fees, costs, or other security. See Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*; the Rehabilitation Act of 1973, as amended, 29 U.S.C. §§ 791, 794(c). **The grant or denial of the request is within the sole discretion of the Court.** Filing a request for an attorney does not extend your



time in which to file a civil action. Both the request and the civil action must be filed within the time limits as stated in the paragraph above ("Right to File A Civil Action").

FOR THE COMMISSION:

*Carlton M. Hadden*

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Carlton M. Hadden, Director  
Office of Federal Operations

SEP 11 2008

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Date

**CERTIFICATE OF MAILING**

**For timeliness purposes, the Commission will presume that this decision was received within five (5) calendar days after it was mailed. I certify that this decision was mailed to the following recipients on the date below:**

Richard L. Nolan  
4650 W Carla Vista Dr  
Chandler, AZ 85226

Sharon D. Eller, Director  
Office of Equal Opportunity  
Department of the Interior  
1849 C St., NW #MS5221  
Washington, DC 20240

Merit Systems Protection Board  
Director, EEO  
1615 M St., NW  
Washington, DC 20419

SEP 11 2008

Date



\_\_\_\_\_  
Equal Opportunity Assistant